IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

Crl.MC.No. 34 of 2007()

CRIME NO. 549/06 OF SASTHAMCOTTA POLICE STATION

PETITIONER: ACCUSED 1,2, & 3

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1. RATHEESH J., AGED 22, S/O. JANARDHANAN NAIR, AMBIZHAVELIL HOUSE, IVARKALA EAST P.O., KUNNATHOOR TALUK, KOLLAM DISTRICT.

2. BHASKARAN NAIR, AGED 62, S/O. NARAYANAN NAIR, AMBIZHAVELIL HOUSE, IVARKALA EAST P.O., KUNNATHOOR TALUK, KOLLAM DISTRICT.

3. JANARDHANAN NAIR, AGED 59, S/O. NARAYANAN NAIR, AMBIZHAVELIL HOUSE, IVARKALA EAST P.O., KUNNATHOOR TALUK, KOLLAM DISTRICT.

BY ADV. SRI.T.S.JOHN
SRI.M.S.RADHAKRISHNAN NAIR

RESPONDENTS:

THE STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 34 of 2007

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Dated this the 4th day of January, 2007

O R D E R

The petitioners are accused and they face allegations, inter alia, under Section 308 I.P.C. They have come to this court seeking anticipatory bail and another Bench of this Court by order dt.18.12.2006 had granted anticipatory bail subject to conditions. The petitioners were directed to surrender before the learned Magistrate and seek regular bail within a period of one month.

2. According to the learned counsel for the petitioners, the petitioners have appeared before the learned Magistrate on 28.12.2006 to seek regular bail. The learned Magistrate, entertaining an incorrect impression that he cannot grant bail under any circumstance as the offence is one triable exclusively by the Court of Sessions, returned the applications for bail without taking any action. The petitioners have hence come to this Court again with a prayer to make it clear that the learned Magistrate shall be at liberty to grant bail to the petitioners when they surrender and seek regular bail.

3. I am at a loss to understand the course followed by the learned Magistrate. It is trite and it has been repeated many times that the mere fact that the offence is triable exclusively by a Court of Sessions does not deprive the learned Magistrate of jurisdictional competence to consider an application for bail. The learned Magistrate will certainly take into account the fact that in an application for anticipatory bail the superior court has come to the conclusion that such petitioner is entitled for anticipatory bail. The learned counsel for the petitioners rightly points out that the decision in **Jose George** v. **State of Kerala** (2006 (2) KLT 188) is also relevant on this aspect.

4. I am, in these circumstances, satisfied that no specific direction need be issued. The learned Magistrate must certainly consider the applications for bail filed by the petitioners when they surrender before him, on merits. The mere fact that the offence is triable exclusively by a Court of Sessions cannot be a reason to throw his hands up and not consider the applications for bail on merits. While considering such applications, the learned Magistrate would certainly take note of the fact that as per order dt.18.12.06 this court had chosen to grant anticipatory bail to the petitioners. The learned Magistrate shall consider whether there are change

in circumstances after the passing of the earlier order by this Court in the application for anticipatory bail. The learned Magistrate shall also take into account the decision in **Jose George** v. **State of Kerala** (2006 (2) KLT 188) while considering the application for bail.

5. This Crl.M.C. is dismissed with the above observations.

(R. BASANT)
Judge

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